

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 93-36

In the Matter of

Tariff Filing Requirements for
Nondominant Common Carriers

REPLY COMMENTS OF THE
NYNEX TELEPHONE COMPANIES

New York Telephone Company ("NYT") and New England Telephone and Telegraph Company ("NET") (collectively, the "NYNEX Telephone Companies" or "NTCs") hereby submit their reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above matter, FCC 93-103, released on February 19, 1993.

The NPRM has generated considerable interest in the industry. Predictably, among the most ardent supporters of the proposed rules are the competitive access providers ("CAPs") who argue that further streamlining of tariff filing requirements for nondominant carriers is necessary to "ensure that the developing CAP industry...will not be stifled."¹ The arguments of these commenters should be rejected by the

interest. Even more importantly, competition among the LECs, IXCs and CAPs is fierce in many market areas, and with respect to certain services.² Additional relaxation of tariff filing requirements for the CAPs and other nondominant carriers is unnecessary to foster competition. The Commission should instead streamline the tariff filing requirements of the LECs.

As the NTCs demonstrated in their comments, the Commission's proposal to permit nondominant carriers to file tariffs containing either only a maximum rate, or a range of rates, does not comply with the Act.³ A range of rates is not a "specified" charge for a service. It allows a carrier to list maximum charges that greatly exceed the actual rate any customer would conceivably be asked to pay, and a minimum rate that is below the actual floor it intends to charge.⁴ A tariff stating only a maximum rate is equally violative of the Act.⁵ It permits a carrier to charge a customer a rate anywhere from zero to the level specified in the tariff. The Commission cannot, consistent with the Act, adopt rules which permit carriers, whether dominant or nondominant, to file tariffs containing only maximum rates or a minimum/maximum range of rates.

² See MFS at p. 6; Comments of LOCATE at p. 6 ("LOCATE"); Comments of ALTS at pp. 6, 8 ("ALTS").

³ See also Comments of American Telephone and Telegraph Company at pp. 3-14; Comments of Bell Atlantic at pp. 9-10.

⁴ See, for example, Teleport Communications Group, Tariff FCC No. 1.

⁵ See, for example, MFS Telecom, Inc., Tariff FCC No. 1.

Furthermore, the proposal to permit tariff filings by nondominant carriers to become effective on one days notice should not be adopted. In support of the Commission's proposal, MFS argues that a one day notice period is necessary to allow CAPs "to respond quickly to competition" and to prevent LECs "from filing harassing oppositions that would unduly delay the CAR, tariffs." ⁶ MFS is incorrect on both

in certain of the NTCs' geographic markets and with respect to certain product and service offerings. As is apparent from the comments filed by a number of other parties, the NTCs' experience in this respect is not unique.¹¹ The claims of MFS and others that without further streamlining of tariff filing requirements, the CAPs and other nondominant carriers will be unable to compete effectively with the NTCs and other LECs ring hollow in the light of current marketplace realities. For example, CAPs and IXC's have already secured large market shares in the High Capacity Special Access market.¹² Should the Commission authorize switched transport expanded interconnection, similar growth in CAP market shares in the switched transport market will likely result as well. The public will not experience the full benefit of competition in these markets if the LECs are not permitted to compete on a full and fair basis. The Commission's proposed rules, however, would exacerbate even further the significant inequality in regulatory treatment currently existing between the LECs and their CAP competitors. There is simply no basis for the continued unequal regulatory treatment of LECs and CAPs based on their status as "dominant" or "nondominant" carriers.

The Commission should determine tariffing requirements based on the nature of the service involved, rather than on the

11 See Comments of Bell Atlantic at pp. 2-4; MFS at p. 6; LOCATE p. 6; ALTS at pp. 6, 8.

12 For example, a 1992 survey of NYT's 200 largest customers revealed that NYT's share of the premise-to-POP DSL service market in Manhattan was 64%, while Teleport alone had achieved a 26% share.

outdated dominant/nondominant carrier dichotomy, and should apply its streamlined tariffing rules to services which are competitive. The Commission recognized this principle in granting AT&T increased regulatory flexibility in the Competitive Carrier Order.¹³ In markets where competition exists, the Commission should likewise streamline tariff filing requirements for the LECs.

In conclusion, the Commission should not adopt the proposed streamlined tariff filing requirements for nondominant carriers. Moreover, in light of the growth of competition, the Commission must re-examine the tariff filing requirements

¹³ In the Matter of Competition in the Interstate Interexchange Marketplace, 6 F.C.C. Rcd. 8880 (1991) ("Competitive Carrier Order").

imposed on the LECs. For LEC services subject to competition, streamlined regulation is appropriate. The time is clearly ripe for the Commission to expand the reforms introduced in the Competitive Carrier Order, and to provide the LECs with increased regulatory flexibility.

Respectfully submitted,

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and
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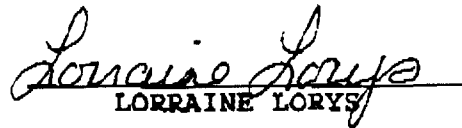
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Dated: April 19, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY
COMMENTS OF THE NYNEX TELEPHONE COMPANIES, was served by first
class United States mail, postage prepaid, on each of the
parties indicated on the attached service list, this 19th day
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